

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT SHEEHY and SANDRA SHEEHY,
et. al.

Plaintiffs,

v.

ORDER
02-CV-592A

MARY ANN WEHLAGE, et. al.

Defendants.

This action was commenced by the plaintiffs on August 16, 2002.

This civil rights action arises from the seizure of cattle owned by plaintiffs Robert and Sandra Sheehy. Plaintiffs allege that their farm was searched and their cattle unlawfully seized in violation of their civil rights. They further allege that the defendants fraudulently and negligently procured the search warrant for their farm.

On October 9, 2002, the case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(A). On June 20, 2003, plaintiffs filed an amended complaint. Defendants Robert McNeill and D.V.M. Lakewood Veterinary Service ("Lakewood") failed to answer the amended complaint. On March 22, 2005, entry of default was granted against defendants McNeill and

Lakewood. On August 10, 2005, defendants McNeill and Lakewood moved to set aside the entry of default.

On September 26, 2005, Magistrate Judge Scott issued a Report and Recommendation recommending that the motion be granted and that the default be set aside. Plaintiffs filed objections to the Report and Recommendation, and defendants McNeill and Lakewood filed a response thereto. The Court heard oral argument on the objections on November 30, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, the Court finds that the defendants' motion to set aside entry of default should be granted. Defendants McNeill and Lakewood shall have 30 days from the date of this order to answer or otherwise move against the amended complaint.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: January 11, 2006